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Part VI
Environmental Protection Agency

40 CFR Part 372
Alternate Threshold for Facilities With Low Annual Reportable Amounts; Toxic Chemical Release Reporting; Community Right-To-Know; Final Rule ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 372
[OPPTS-400087A; FRL-4920-5]
RIN 2070-AC70
Alternate Threshold for Facilities With Low Annual Reportable Amounts; Toxic Chemical Release Reporting; Community Right-To-Know Agency: Environmental Protection Agency (EPA).
Action: Final rule.

ENVIRONMENTAL PROTECTION AGENCY
Summary: EPA is establishing an alternate threshold for those facilities with low annual reportable amounts of a listed toxic chemical. These are facilities that would otherwise meet reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). A facility that meets the current section 313 reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternate manufacture, process, or otherwise use threshold of 1 million pounds per year, for that chemical, provided that certain conditions are adhered to. EPA is establishing this alternate threshold in response to petitions received from the Small Business Administration and the American Feed Industry Association, and in consideration of the future management of the Toxic Release Inventory (TRI).
Dates: This rule is effective November 22, 1994, except for 40 CFR 372.27 and 372.95 which have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. When approval is received, EPA will publish notice of the effective date.
FOR FURTHER INFORMATION CONTACT: Tim Crawford, Project Manager, Mail Code 7408, 401 M St., SW., Washington, DC 20460 for specific information on this rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.
SUPPLEMENTARY INFORMATION:
I. Introduction
A. Statutory Authority
This rule is issued under section 313(f)(2) and section 328 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023(f)(2) and 11048. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities which manufacture, process, or otherwise use listed toxic chemicals in excess of the applicable threshold quantities to report their environmental releases of such chemicals annually. The threshold quantities are established in section 313(f)(1). EPA has authority to revise these threshold amounts pursuant to section 313(f)(2); however, such revised threshold amounts must obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to section 313. A revised threshold may be based on classes of chemicals or categories of facilities.
Beginning with the 1991 reporting year, such facilities also began reporting source reduction and recycling data for listed chemicals, pursuant to section 6607 of the Pollution Prevention Act, 42 U.S.C. 13106. This information is submitted on EPA Form 9350-1 (Form R) and compiled in an annual Toxic Release Inventory (TRI). Each covered facility must file a separate Form R for each listed chemical manufactured, processed, or otherwise used in excess of the reporting thresholds established in section 313(f)(1). Section 328, 42 U.S.C. 11048, provides EPA with general rulemaking authority to develop regulations necessary to carry out the purposes of the Act.

B. Background

On August 8, 1991, the Small Business Administration (SBA) petitioned EPA to exempt from TRI reporting requirements, facilities reporting relatively low volumes of chemicals released and transferred off-site. The petition proposed that EPA establish a tiering system within the list of reportable chemicals under EPCRA section 313. The petition suggested a division of the list to be based on a combination of chemical toxicity and amounts reported to TRI. Those chemicals deemed to have high toxicity concerns and/or are reported in relatively low volumes nationally, would have a lower ``exemption'' threshold (such as 10 pounds for the sum of releases and transfers) or would be reported on a much more simplified form. Those chemicals with lower toxicity concerns and are reported in relatively high volumes would be subject to a much higher ``exemption'' level, such as 5,000 pounds for the sum of releases and transfers.

EPA published this petition as a notice in the Federal Register of October 27, 1992, (57 FR 48706), and received a substantial number of comments. Copies of these comments are available in the TSCA docket, OPPTS docket number 400072.

EPA received a similar request in a petition from the American Feed Industry Association (AFIA) on February 14, 1992. AFIA requested an exemption of Standard Industrial Classification (SIC) code 2048 from TRI reporting. The general basis of this request is that facilities in SIC code 2048, ``Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats,'' have such small releases of the listed chemicals (primarily feed additives) that the industry as a whole does not contribute information that furthers the purposes of EPCRA, therefore, the imposition of TRI reporting on the feed industry is unfair. The AFIA petition suggested, as an alternative to their request of an SIC code deletion, that EPA adopt the approach proposed in the SBA petition.

EPA published the AFIA petition as a notice in the Federal Register of April 13, 1993 (58 FR 19308), and again received a substantial number of comments. These comments are available in the TSCA docket, OPPTS docket number 400077.

EPA decided to focus on a revision of current reporting requirements that would be applied to all industries subject to section 313, as opposed to a revision restricted to target industrial sectors or SIC codes. EPA therefore considers this rule as a response to both the AFIA and SBA petitions.

As part of the pre-proposal process, which included consideration of the comments received, EPA held a public meeting on February 16, 1994, to present its analytical findings and open discussions regarding reduced reporting for facilities with low volumes of releases and transfers. Comment was taken on a variety of positions. Results from EPA's preliminary analysis are presented in an issues paper, Toxic Release Inventory--Small Source Exemption (January 27, 1994) (Issues paper), which can be obtained in the TSCA docket, OPPTS docket number 400072, along with copies of the testimony presented at the public meeting. A copy of the Issues Paper can also be found in OPPTS docket number 400087.

C. Summary of the Proposed Rule

EPA issued a proposed rule on July 28, 1994 (59 FR 38524), to establish a higher manufacture, process, or otherwise use threshold for those facilities having low volumes of specific chemicals for the sum of amounts released and transferred off-site for the purpose of treatment and/or disposal. Facilities qualifying for the low release and transfer criterion and that manufacture, process, or otherwise use less than the higher ``alternate'' threshold would be eligible to submit a certification statement instead of a full Form R report. The certification statement would be made available to provide the regulated community, compliance programs, and other interested parties basic information concerning which facilities were manufacturing, processing, or otherwise using a TRI chemical at current section 313 reporting quantities, but whose sum of amounts released or transferred, for the purpose of treatment and/or disposal, were below 100 pounds. A facility meeting the above conditions and choosing to submit a certification statement would be required to maintain records substantiating the calculations that establish the facility's eligibility to apply the alternate threshold. EPA issued the proposal in part as a response to both the SBA and AFIA petitions, but the burden relief provided by the proposal was also a result of EPA's consideration of the future management of the overall TRI program. As stated in the proposal, EPA is in the process of significantly expanding the TRI program to add many additional chemicals to the list. EPA is also in the process of evaluating industry sectors not currently covered by TRI for addition. Both of these actions are expected to substantially increase the level of current reporting. The increase in reporting has obvious information management implications for EPA as well as for States. Today's action will make a

significant portion of the current Form R data management capacity available for data on additional chemicals and from new sources. EPA believes this will also help increase the long-term efficiency and utility of the data system while preserving a basic link for the public between facility location and reportable TRI chemicals.
EPA's proposal offered several alternatives to those advanced by the SBA and AFIA petitions. All aspects of the proposal were available for public comment. EPA requested specific comment on the following issues: (1) What should form the basis to determine which facilities or reports should be eligible for burden reduction (for example, should a category of facilities be based on the sum of amounts released and transferred or based on the sum of total waste generated for a given chemical); (2) what volume level should determine the eligible ``category''; (3) what should be the alternate manufacture, process, or otherwise use thresholds; (4) what should constitute the certification statement and how often it should be submitted; and (5) what would be the impacts of such a reporting modification. These issues and the comments received are addressed in unit III. of this preamble.

D. Summary of the Final Rule

EPA is establishing an alternate threshold for those facilities with a low amount of a listed toxic chemical in their ``annual reportable amount'' (in the proposal, this amount was referred to as ``total waste''). Contingent upon OMB approval, the alternate threshold rule will be effective for activities beginning January 1, 1995. EPA will publish a technical amendment in the Federal Register when the reporting additions have been approved by OMB. This reporting modification will enable facilities otherwise meeting reporting requirements under section 313 of EPCRA to take advantage of a higher threshold than those set out in 40 CFR 372.25 for any listed toxic chemical, if the annual reportable amounts of that toxic chemical did not exceed 500 pounds for the combined total quantities released at the facility, disposed within the facility, treated at the facility (as represented by amounts destroyed or converted by treatment processes), recovered at the facility as a result of recycle operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycle, energy recovery, treatment, and/or disposal. These volumes correspond to the sum of amounts reportable for data elements on EPA Form R (EPA Form 9350-1;Rev. 12/4/93) as Part II column B or sections 8.1 (quantity released), 8.2 (quantity used for energy recovery onsite), 8.3 (quantity used for energy recovery off-site), 8.4 (quantity recycled on-site), 8.5 (quantity recycled off-site), 8.6 (quantity treated on-site), and 8.7 (quantity treated off-site). The alternate threshold applies to a defined category of facilities on a per chemical basis. The alternate manufacture, process, or otherwise use threshold for a specific chemical at a facility meeting the category definition would be an amount greater than 1 million pounds per year. Specifically, if a facility manufactures, processes, or otherwise uses 1 million pounds or less of a chemical annually, and if 500 pounds or less of that chemical is present in their annual reportable amount, then the alternate reporting option is available to that facility for that chemical. Other chemicals at the facility that do not meet the criteria for the alternate threshold would continue to be reported on Form R as currently required. To take advantage of the alternate threshold, a facility is required to: (1) Submit an annual certification statement indicating that the facility met the requirements for use of the alternate threshold for the specific chemical and (2) maintain and make available upon request accurate records substantiating the calculations supporting the facility's claim of eligibility for the alternate threshold for each chemical.

II. Explanation of this Threshold Modification

This final rule establishes an alternate threshold for purposes of submitting reports under section 313 of EPCRA. The key factors that govern the application of this alternate threshold are, the sum of amounts of the listed toxic chemical in their annual reportable amount, and the quantity of that chemical being manufactured, processed, or otherwise used within the facility.

Current reporting thresholds set forth in EPCRA section 313(f)(1) apply to the manufacture, process, or otherwise use of listed section 313 chemicals. In short, these are activity-based thresholds. EPCRA section 313(f)(2) also provides EPA with the flexibility to revise the established activity-based threshold amounts in section 313(f)(1) and apply such revised thresholds to individual chemicals, classes of chemicals, or categories of facilities. However, any modification of a threshold must continue to obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of section 313.

This final rule first establishes a category of facilities based on the annual sum of a listed toxic chemical in their annual reportable amount. By establishing this category of facilities, a threshold modification can then be applied selectively to that category. A facility becomes part of this category if at least one toxic chemical,

otherwise reportable, does not exceed the 500 pound criterion for that chemical in their annaual reportable amount. Annaul reportable amount is defined as the combined total quantities released at the facility, disposed within the facility, treated at the facility (as represented by amounts destroyed or converted by treatment processes), recovered at the facility as a result of recycle operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycle, energy recovery, treatment, and/or disposal. These volumes correspond to the sum of amounts reportable for data elements on EPA Form R (EPA Form 9350-1; Rev. 12/4/93) as Part II column B or sections 8.1 (quantity released), 8.2 (quantity used for energy recovery on-site), 8.3 (quantity used for energy recovery off-site), 8.4 (quantity recycled on-site), 8.5 (quantity recycled off-site), 8.6 (quantity treated on-site), and 8.7 (quantity treated off-site). A facility in this category is then eligible to take advantage of an alternate manufacture, process, or otherwise use threshold of 1 million pounds for that specific chemical. Hence, if the facility meets the criterion of having no more than 500 pounds in its annual reportable amount of a listed toxic chemical, and for that chemical, the facility does not exceed the manufacture, process, or otherwise use threshold of 1 million pounds, then that facility may submit a certification statement for that chemical in lieu of a full Form R. A facility eligible to apply the alternate threshold and choosing to submit a certification statement must keep records substantiating the facility's eligibility determination. If EPA subsequently determines that the facility was ineligible to apply the alternate threshold, then the Agency can bring an enforcement action with respect to nonreporting of Form R.

III. Issues Considered and Comment Summary

EPA received about 500 comments in response to EPA's Alternate Threshold proposal (59 FR 38524). Approximately 400 of these comments were submitted by industry or entities representing industry concerns. The remaining comments were submitted by environmental and labor organizations, public interests groups, state program representatives, and private citizens. The following section is a discussion of the major issues and points raised in comments received and EPA's consideration of those comments that pertain to this final rule. The major issues are discussed in the following order: Structure of the facility category; poundage level for the category; alternate threshold level; certification statement; recordkeeping requirements; covered facility status; degree of burden reduction; and effective date. A Response to Comment document, which addresses issues raised in the comments and outlines EPA's response in greater detail, has been prepared and is available through the TSCA docket (OPPTS-400087).

A. Facility Category

The reporting modification established by this rule is intended to provide regulatory relief for facilities that report low amounts of listed toxic chemicals in their annaul reportable amount. For reasons stated in the proposal (59 FR 38524), this reporting modification is intended to help focus both industry's and EPA's resources on the data of greatest significance. EPA proposed to target this regulatory relief at facilities where the sum of releases and a subset of the transfers were below 100 pounds. However, EPA offered alternatives including use of total waste as the basis of the eligible ``category."

1. Category based on releases and certain transfers as proposed. Many industry commenters voiced approval for the structure of the category as initially proposed by EPA, but generally these commenters urged the Agency to raise the volume level of the category. Several comments submitted by industry requested that EPA consider all releases to Publicly Owned Treatment Works (POTW) as zero releases or disregard them from the calculations a facility must make in determining their eligibility for the alternate threshold. A number of commenters from industry said that EPA should only focus on amounts released and referred to the language in the statute whichP states, . . . ``such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities . . . ," as support.<SUP>1 These commenters argued that transfers to POTWs and landfills have little environmental effect and do not represent actual environmental loadings. Many commenters from the animal feed and dairy industries referred to their most frequently released chemicals, such as sulfuric acid, arguing that amounts of these chemicals are almost completely neutralized or adequately treated by recipient POTWs and should not be considered a factor in a facility's eligibility. A similar comment suggested that, if EPA is interested in amounts going to or being handled by POTWs or landfills, the TRI should be expanded to include these types of facilities.

\ \Section 313(f)(2)--The Administrator may establish a threshold amount for a toxic chemical different from the amount established by section 313(f)(1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

EPA disagrees with commenters who would limit the category to direct releases at the facility only. EPA's rationale for proposing the sum of releases and certain transfers was to cover direct as well as potential environmental loadings associated with the wastes generated by that facility. EPA can see no merit in the argument that transfers to POTWs should be discounted as part of the category determination. The ultimate entry into the environment of any particular chemical sent to a POTW in wastes is highly dependent upon the type of treatment/ disposal process at that POTW. For example, ammonia may be destroyed by tertiary treatment processes, but not all POTWs employ this process. Additionally, many chemicals, such as most metals, are not converted to less toxic forms during treatment processes, such as those employed by POTWs, and may either pass directly through these treatment operations and/or be directed to other media. Therefore, EPA believes that these amounts, along with amounts handled by other management practices that can potentially result in environmental releases, should be accounted for and be part of a facility's eligibility determination. Many commenters representing environmental and public interest groups stated their concern over the amounts of materials that would not be accounted for by EPA's proposed category approach. These commenters urged EPA to eliminate the ``recycling loophole'' which can be characterized by the removal from public access information on the volumes associated with waste management activities such as materials recycling. These commenters contend that not including this type of information as a criterion in the facility category determination undermines source reduction and is in conflict with national policy established in the Pollution Prevention Act (PPA) of 1990. Some of these commenters stated that the recycling loophole encourages burning of toxic wastes that are often transferred to cement kilns, instead of encouraging source reduction practices. Additional comments received raised concerns over hazardous emissions that result from solvent recycling operations, some of which are not listed within the manufacturing SIC codes of 20 through 39, and therefore, are not currently required to report to TRI. Commenters indicated that TRI provides specific data on transfers of hazardous wastes for the purpose of recycling. These data are important because they indicate where releases from the further processing of such toxic chemicals may be occurring.

A comment from a representative of a state's toxics reporting program stated that significant amounts of currently reported information within their state would no longer be reported if EPA's category were implemented as proposed. Their analysis of the impact on their state's reporting indicated that EPA's proposal would primarily benefit larger businesses. This commenter noted that some facilities operating in their state identified as meeting the 100 pound category as proposed have reported off-site transfers for recycling of amounts as high as 3 and 15 million pounds for a given chemical. This commenter suggested that this ``recycling loophole'' could be eliminated by including off-site transfers for recycling and those amounts burned for energy recovery in the category determination. As discussed below, EPA believes that there is merit in structuring the category in such a way to include volumes associated with management activities beyond releases and limited transfers as proposed. Ultimately, the structure of the category should relate to how well it serves to provide an optimal balance between burden reduction for submitters and data preservation for users of the full range of TRI data.

2. Category based on annual reportable amount. EPA's proposal included an alternative that would establish a category based on the total amount in wastes, which was referred to as total waste generation. This category includes all amounts released on-site, transferred off-site for treatment or disposal, recycled or burned for energy recovery on- or off-site, and treated on-site. One commenter from industry argued against using the total waste option, because the purpose of the reporting modification should be concerned with information relevant under EPCRA. This commenter went on to say that the information collected under the PPA of 1990 is subsidiary to EPCRA section 313 data elements. This commenter and several others from industry stated that basing the category on total waste limits the amount of

burden reduction sought by this reporting modification, and that adopting the total waste approach would actually serve as a disincentive for applying more pollution prevention practices. Similarly, commenters from industry said that creating a category determination that does not include amounts sent off-site for recycling or to incineration for energy recovery would encourage more facilities to engage in these activities, as opposed to treating or directly disposing of wastes. An industry representative said that not including amounts sent off-site as part of the facility category determination is particularly relevant when such wastes are recovered and are then returned to the originator. This commenter along with several others from industry said that excluding these amounts would encourage facilities to participate in responsible/reasonable care types of programs, which further pollution prevention goals. One commenter said that the environmental releases from wastes generated by a ``covered facility'' are likely to be included in the calculation of environmental releases either (i) by the generator of the waste, or (ii) by an off-site ``covered facility'' to which the waste is sent for recycling or energy recovery. The commenter continued by saying that since environmental releases are the ultimate focus of the TRI program, the likelihood that they will be included in the release calculations of some ``covered facility'' should allay fears that toxic chemicals transferred off-site for recycling or energy recovery would somehow escape the system. EPA disagrees with commenters stating that information collected under the PPA is subsidiary to data mandated by EPCRA section 313. EPA believes that the PPA data are an enhancement of the basic data gathered by EPCRA section 313. The purpose of this enhancement was to provide the public with a more complete picture of the amount of toxic chemicals in facility waste streams, which can highlight the potential for source reduction. EPA believes that including a broader category of amounts reportable to TRI in a facility's determination will not discourage facilities from implementing pollution prevention activities, and that the inclusion of this broader category of amounts will encourage facilities to practice source reduction measures where possible, which is the primary goal of pollution prevention.<SUP>2

\ \Pollution Prevention Act of 1990, section 6602(a)(4) ``Source reduction is fundamentally different and more desirable than waste management and pollution control. The Environmental Protection Agency needs to address the historical lack of attention to source reduction.''

Comments from the environmental community, labor organizations, states, and private citizens voiced strong opposition to EPA's proposed category because it did not include amounts being recycled or burned for energy recovery. These commenters were concerned about the removal from public access of information regarding the further processing of hazardous materials and the emissions that may result. A number of commenters urged EPA to continue to collect the information on materials sent off-site for the purpose of recycling and/or energy recovery which were not included in EPA's proposed approach. A few public interest groups submitted comments that described hazardous materials recycling as a hazardous activity, and urged EPA to continue to collect information on materials being sent to these facilities. Noting cases where these facilities have created serious environmental problems, a few other comments came from individuals and local interest groups living near facilities where hazardous waste recycling and burning occurs. These commenters stress the need for their communities to have access to information regarding materials being sent to these facilities. Some urged EPA to list these types of facilities for direct TRI reporting.

Several commenters stated that EPA has the authority, through the PPA and EPCRA, to collect and make available information regarding chemicals being recycled and burned for energy recovery and urged that EPA continue to do so.

EPA believes that a category based on either releases and transfers or annual reportable amounts will satisfy the section 313(f)(2) requirement for reporting on ``total releases'' because ``annual reportable amounts,'' as defined in this rule, encompasses releases. However, EPA agrees with the commenters concerned with the amounts of materials that are not part of the category based on releases and transfers. As noted in the proposal, amounts associated with waste management activities for those facilities fitting a category description based only on releases and transfers can be substantial. EPA carefully weighed these comments regarding the structure of the category and has determined that a category based on

annual reportable amounts is more consistent with the goals of EPCRA than the release and transfer option.

EPA's proposal presented an analysis of the volumes of materials managed as waste that would be affected (i.e., not reported in detail) under a reporting modification based on a facility category of releases and transfers or annual reportable amounts.

Table 1.--Comparison of Impact on Data Between Proposal and Final Rule (1992 Data)

		Data affected*\1\ (Percent of 1992 Data)	
	1992 Data	Proposed	Final
Number of Form Rs	83,000	62,500 (-25)	63,000 (-24)
Pounds of Releases and Transfers	4,400,000,000	222,700 (0.01)	2,209,800 (0.05)
Pounds of Annual Reportable Amounts	37,000,000,000	6,105,310,400 (16.7)	2,505,600 (0.01)

<SUP>*1Pounds of releases/transfers and annual reportable amounts not reported on Form R and percentage of national amounts, if the alternate threshold had been available and used by all eligible facilities for 1992 reporting.

There was a substantial difference in the annual reportable amount data associated with the forms, as defined by the two basic category approaches. As presented in EPA's proposal, the total waste volume (annual reportable amount) associated with the forms identified by a category based on releases and transfers (at a level of less than 100 pounds), was estimated to be 2.2 billion pounds based on 1991 data. This represented approximately 6.3 percent of this data nationally. The same category, in terms of 1992 data, as seen in Table 1 above, affected approximately 6.1 billion pounds of annual reportable amount information, or 16.7 percent of this data nationally. In comparison, a category based on annual reportable amounts not exceeding 500 pounds would apply to very nearly the same number of Form Rs. However, based on 1991 data, these forms had only 2.7 million pounds of annual reportable amounts associated with them. The forms fitting the same category for 1992 reporting, as seen in Table 1 above, have an estimated 2.5 million pounds of annual reportable amount data associated with them (Ref. 4). EPA believes that the significant increase in volumes of annual reportable amounts reported in 1992 as compared to 1991 can be attributed to a greater amount of recycling and on-site treatment activities reported by those facilities that have releases and transfers of less than 100 pounds. Additionally, some of the volume differences may also be attributed to more accurate reporting given that 1992 was the second year that the data associated with the PPA was required.

EPA believes that the disparity in amounts of data associated with the forms defined by a category based on releases and transfers and a category based on annual reportable amounts is great enough to discount an approach based on only releases and transfers for treatment and/or disposal. Hence, EPA agrees with those commenters who have stressed the need to retain information on amounts of materials being treated, recycled, or burned for energy recovery both on-site and off-site. EPA has therefore structured the category in this final rule to be based on the sum of amounts reported during the calendar year as represented by the following: The combined total of quantities released at the facility, disposed within the facility, treated at the facility (as represented by amounts destroyed or converted by treatment processes), recovered at the facility as a result of recycling operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycle, energy recovery, treatment, and/or disposal. These volumes correspond to the sum of amounts reportable for data elements on EPA Form R (EPA Form 9350-1; Rev. 12/4/93) as Part II column B or sections 8.1 (quantity released), 8.2 (quantity used for energy recovery on-site), 8.3

(quantity used for energy recovery off-site), 8.4 (quantity recycled on-site), 8.5 (quantity recycled off-site), 8.6 (quantity treated on-site), and 8.7 (quantity treated off-site). Certain commenters stated their objection to inclusion of these amounts, using the rationale that doing so would discourage pollution prevention. EPA believes that inclusion of these amounts is in keeping with the goal and national policy of pollution prevention. EPA believes that this information should be available to the public and other interested parties, who are concerned with the operations that generate, receive, and further process large amounts of these materials. The public has demonstrated a strong concern about these operations, and TRI provides a reliable accounting of reportable constituents and their estimated amounts from those facilities required to report to TRI. EPA further believes that requiring facilities to account for pollution prevention efforts, including source reduction activities, can serve to inform industry and the users of the data about the level of progress being made at a particular facility and within a given industry.

EPA believes that a category based on annual reportable amounts will more appropriately focus the burden reduction benefit of this rule on facilities that have limited the entry of toxic chemicals into waste streams, rather than on facilities that could derive the benefit by shifting toxic chemicals from one management practice to another. EPA also believes that a category based on annual reportable amounts will retain a higher degree of specificity of the toxic chemical data while still allowing for the burden reducing ``conversion'' of a substantial number of full Form R reports to certification statements. 3. Category based on a chemical list division. Many commenters from industry supported the approach put forth in the SBA petition to treat listed chemicals differently. This approach was referred to in EPA's proposal as the ``split list'' approach. These commenters stress that only by distinguishing among chemical toxicities can EPA effectively determine what information can be exempted on the basis of a chemical's relative and potential impact. They argue that only by making distinctions among chemicals on the basis of their human health and/or environmental impacts can EPA properly determine what information is vital to a community's right-to-know, as opposed to chemical accounting for the sake of reporting. A few of these commenters supported EPA's example of splitting the listed chemicals primarily based on their Occupational Safety and Health Administration (OSHA) carcinogen classification, as presented in EPA's Issues Paper (Ref. 3). Several of these industry commenters who support the ``split list'' approach suggested that EPA establish a simplified petitioning system that would allow parties to submit requests to move chemicals from one list to another.

One commenter stated that current risk assessments are overly reliant on cancer rates and ignore too many other health problems, including adverse reproductive outcomes such as birth defects, developmental abnormalities, low birth weights, and behavioral abnormalities. This commenter also cites adverse effects on the human immune system, neurological diseases, as well as asthma and other respiratory diseases. In addition, other commenters noted that adverse impacts on the ecosystem, including wildlife reproductive effects (e.g., from endocrine disruptors), need to be considered when discussing toxicity.

Many of the commenters from the environmental community stressed their concern over losing any data or limiting the public's access to information on toxic chemicals that persist in the environment or have carcinogenic, developmental, or other serious health impacts. Several commenters described EPA's alternate threshold as inappropriate and insisted on full reporting on ``small releases'' of persistent toxic chemicals such as mercury or highly toxic chemicals such as phosgene. Other commenters supported the addition of highly toxic chemicals and are in favor of setting a much lower reporting threshold in order to receive reports on these chemicals. A few commenters urged EPA to add these types of chemicals to TRI and require reporting for any amounts released. One commenter objected to EPA's proposed reporting change, stressing that it is based on the fallacious assumption that ``small'' releases do not pose risks to public health and the environment and therefore the public does not need explicit information regarding such releases.

For the purpose of this category structure, EPA chose to make no distinction among listed chemicals. EPA is not attempting to apply risk-based concepts in this rulemaking. EPA does recognize that there are wide variations in the hazards associated with the chemicals on the list. EPA is concerned that the current threshold structure may be masking important data on releases and waste management activities of certain chemicals that may exhibit bioaccumulative properties or direct toxicity even at low levels.

EPA may consider a future modification of current thresholds to more fully capture information on chemicals that persist in the environment and bioaccumulate. It is, therefore, EPA's intention to establish a reporting modification in this rulemaking that creates a degree of reporting relief without substantially limiting the information currently collected and made available through TRI. It is also EPA's intention that this reporting modification apply to all industries subject to reporting and to all listed toxic chemicals without regard to their relative hazard.

4. Chemical-specific issues. Several commenters from the feed industry repeated their position that the chemicals for which the majority of their reports are submitted are Food and Drug Administration (FDA) approved nutrient additives for animal feed, and are generally recognized as safe (GRAS) by the scientific community. One commenter supporting these points added that the industry's handling practices for these chemicals further reduce losses that might otherwise occur, which should lessen concern over adverse affects resulting from the use or processing of these chemicals. One commenter requested that EPA establish a separate reporting threshold for ``byproducts,'' such as ammonia generated from rendering operations, and suggested a 100,000 pound level for these chemicals. A few specialty industries, such as the cold storage industry, which uses ammonia for refrigeration units, claim that their industry accounts for only a fraction of the volume of ammonia produced nationally. These commenters make the point that their use of this chemical is safe, does not threaten the environment, and the reporting of the emissions associated with these uses serves no benefit. One commenter believes EPA should modify the processing threshold to exclude chemicals intentionally added when making products for distribution if the total facility releases and transfers are less than 4 percent of the use volume of the chemical in the calendar year. This commenter states that this step will promote use reduction and release reduction by facilities where processing of toxic chemicals is essential for the manufacture of their product. As indicated in the above section, many of the comments submitted by the environmental community urged EPA to collect and make available through TRI information on any amounts of chemicals that could affect serious impacts on human health and the environment. For many of the same reasons given in the above discussion concerning a possible list division, EPA intends that the regulatory relief provided by this rule be applied to all facilities and all listed toxic chemicals, rather than only those that are not highly toxic. EPA believes that the intent of EPCRA section 313 is to place the decisionmaking on whether a facility's releases are acceptable to a community in the hands of the community. Therefore, EPA does not believe that it should make distinctions among the listed chemicals on the basis of inherent toxicity.

Avoiding further complication in the use of TRI data is also a significant consideration in how this burden reduction amendment is structured. EPA strongly believes that an individual interested in accessing TRI data should be able to locate and understand the information contained in the data base with as few encumbrances as possible. Singling out specific chemicals and chemicals managed by specific processes from how other chemicals are reported, could unnecessarily complicate the use of the data. While many of the issues raised by the commenters concerning specific chemicals may have merit, EPA does not believe it would be productive to further complicate this rule amendment by making particular exceptions for specific chemicals or handling practices.

B. Level of the Category

In addition to the basis on which a category of facilities would be structured, EPA asked for comment on the poundage level proposed and offered alternatives. Although a few commenters supported EPA's proposed level of less than 100 pounds for the sum of releases and transfers, most of the commenters from industry preferred a higher level, while some commenters generally opposed to the reporting modification said they could accept a level such as zero or 10 pounds as long as total waste were not excluded and other conditions were met. A federal Agency, along with one chemical manufacturer, submitted comments in support of EPA's proposed level, while comments submitted by the feed industry generally supported a release and transfer level of 500 pounds. This level was supported by these commenters based on the types of chemicals handled by their industry. One chemical specifically mentioned was sulfuric acid, which some commenters said, ``would not be of great concern for releases at 500 pounds or less.'' Some of the other commenters supported the 500 pound level based on the level of accuracy of data collected by TRI. A few industry commenters said that EPA's proposed level was

too low to benefit their specific industry and urged EPA to elevate the level. A trade association, among others, criticized EPA's proposal as lacking adequate justification. Several of these commenters said that EPA's selection of approach and level were unfounded, while others disagreed that there was a ``natural break'' in the data, as EPA described at the 100 pound level. Some commenters identified other levels in the data that they thought indicated a more appropriate level for selection. Several industry commenters questioned EPA's sincerity in providing any level of significant burden reduction. One commenter stated that EPA's proposed level is based on the impact of total waste information affected, which does not necessarily relate to actual volumes of total waste generated.

One commenter said that EPA should set the category level at 500 pounds because it currently accepts range reporting of 0-499 pounds and adopting a ``low-level'' release category of less than 500 pounds is effectively no different than allowing a facility to use a range code. Other commenters supporting the 500 pound level describe the data loss as not unreasonable.

Several commenters said that EPA's proposed level does not allow a margin of error in estimating releases, and therefore, many facilities will be forced to submit actual release amounts on Form R and will not be able to take advantage of the alternate threshold. Additional comments were submitted that stated the application of a less than 100 pound category on chemicals with relatively low toxicities was not consistent with EPA's Common Sense Initiative, and that a 5,000 pound release of a chemical such as an acidic cleaner over the course of 1 year is insignificant. These commenters stress that chemicals such as this do not bioaccumulate, are not carcinogenic, and do not damage the environment at the levels used by their industry. Commenters supporting the split list approach are in favor of an elevated poundage level for chemicals of low toxicity and a much lower poundage level for those chemicals determined to have higher toxicity or hazard concerns. Many of these commenters urge EPA to apply the SBA's 5,000 pound level to the low toxicity chemicals and a 10 pound level for chemicals considered to be of greater concern. Some commenters supporting the split list approach argued that the adoption of a 5,000 pound level for low toxicity chemicals could improve data quality and further lessen the burden on industry and EPA. Some commenters suggested variations on the levels suggested by the SBA petition, such as 1,000 pounds for low toxicity chemicals and 0 to 500 pounds for chemicals with high toxicities. One commenter supporting a 5,000 pound split list approach assumed that if all of the amounts released and transferred (for the purpose of treatment and/or disposal) which EPA estimated would not be reported on under its proposal were located at a single facility using one chemical of ``typical'' toxicity, the concentrations of those releases would be below OSHA permissible exposure limits if the distance to the facility's fenceline was 470 meters or more. The commenter continued with this supposition to make the point that for a 5,000 pound release and transfer category level, within no single location (zip code) would there be a loss of an amount great enough to trip a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) reportable quantity (RQ) for a single facility, at least for two states researched by the commenter. This argument is premised on the amount released and transferred, for a given chemical under the 5,000 pound category level, being evenly distributed over a facility's annual operations while not exceeding the maximum amount released within a single 24-hour period of a chemical of ``typical'' toxicity. The commenter used ammonia as an example. This argument would not apply for chemicals with CERCLA RQ values below 100 pounds, which would exclude approximately 150 currently listed TRI chemicals (Ref. 2). Additionally, a CERCLA listed chemical released in excess of its RQ value as part of a facility's routine operations, as presented in the example, would require an application for continuous release notification, or the facility would be required to report each instance that the amount released exceeded the chemical's RQ value.

Many other comments submitted by industry supported a level of 5,000 pounds, making no toxicity distinctions among listed chemicals. This was broadly supported by referring to the percentage of release and transfer (for the purpose of treatment and/or disposal only) data that would still be collected. These commenters referred to EPA's analysis relating to volumes of chemicals released on-site and sent off-site for the purpose of treatment and/or disposal that would be affected based on a range of category levels. Many commenters contend that by establishing the category level at less than 5,000 pounds, only an additional 0.7 percent of the data for releases and transfers would be affected, as compared with a facility category set at less than 100 pounds for releases and transfers. Many of these commenters said

that their facility had never received a request for information or had any knowledge of the public's interest in releases of low amounts, adding that resources necessary to provide this information could be used more beneficially.

A comment submitted by a chemicals manufacturer supporting the 5,000 pound threshold said that such a threshold would not significantly reduce the quantity of aggregate releases and transfers that their facilities currently report. A trade association submitted comment in support of a total waste approach, but proposed a level matching that of a conditionally exempt small quantity generator as defined in the RCRA program, which would be less than 2,645 pounds.

Conversely, some commenters argued that EPA should be focusing on expansion of community right-to-know and should lower reporting thresholds to collect data on small releases of highly toxic chemicals that are currently unavailable to the public in a comprehensive format. An environmental organization criticized the alternate threshold proposal for not including amounts transferred to recycling and energy recovery facilities. This organization voiced support for a total waste approach, but with a threshold of 10 pounds. Citing data presented in EPA's proposal, this commenter states that a facility category based on total waste at a 10 pound level corresponds to approximately 10,000 forms, which represents substantial regulatory relief for businesses without reducing the public's access to important information which they have a right-to-know. A major trade union voiced approval of this approach, provided that a facility also indicate into which media a chemical was released.

As discussed in the preceding section, EPA has decided to base the facility category on the annual reportable amount rather than the amount released plus limited transfers. After considering the multiple factors related to the selection of a category level, EPA has selected an annual reportable amount of not greater than 500 pounds. In choosing a poundage level, EPA sought a level that provides a reasonable balance between preserving the detail of data available to the public and providing facilities with a realistic option for burden reduction. EPA believes that a level of 500 pounds or less represents a reasonable cut-off for this annual reportable amount approach. EPA estimates that 20,100 Form Rs would have been affected for the 1992 reporting year by the alternate threshold for a category based on an annual reportable amount of no more than 500 pounds. This number of forms is essentially identical to the number that would have been eligible for the proposed approach.

Based on 1992 data, the amounts reported on Form Rs identified as coming from facilities that would meet the facility category of annual reportable amounts not exceeding 500 pounds, account for less than 1 percent of annual reportable amounts reported nationally. While the amounts reported by facilities fitting EPA's proposed category and level account for nearly 17 percent of annual reportable amounts reported nationally. These data also indicate several additional impacts that EPA believes are important in determining which level is appropriate.

EPA believes that a comparison of impacts at the county level is relevant to EPA's decision. Based on 1992 data, an estimated 250 counties would have greater than 50 percent of all of their annual reportable amount data affected by a category based on releases and transfers at a 100 pound level, as EPA proposed. Under a category based on annual reportable amounts not exceeding 500 pounds, about 90 counties are estimated to have greater than 50 percent of their annual reportable amount data affectedP (Ref. 1). Perhaps more importantly, the number of counties that would have a volume of over 1 million pounds of their annual reportable amount data affected, based on the proposed release and transfer category, is estimated to be greater than 278, while the category based on annual reportable amounts not exceeding 500 pounds has no counties where annual reportable amounts greater than 1 million pounds would be affected (Ref. 1). Selection of the 500 pound level is consistent with current range reporting. Current reporting guidance allows facilities to submit estimated amounts pertaining to releases on-site or transfers off-site in terms of three range codes. These range codes correspond to poundage amounts of 1-10, 11-499, and 500-999 pounds. Range codes can be used in as many reporting fields as the estimated amount applies for amounts released or transferred. While range codes are not currently available for reporting PPA data, establishing a category of facilities based on annual reportable amounts effectively extends range reporting to these activities. Submission of a certification statement is different from receipt of a Form R that indicates amounts in ranges. The certification will not provide the detail as to which media the chemical was released or otherwise directed as does Form R.

EPA does not believe that the fact that a commenter has received no inquiries from the public demonstrates that the information is not of value. Because the data are kept in a publically available database, there is no need for individuals to contact a company in order to access and use the information.

Finally, EPA believes a category based on annual reportable amounts not exceeding 500 pounds will limit the loss of detailed information currently available, while providing industry with a reasonably attainable level. As EPA's analysis indicates in Table 1 in unit III.A.2. of this preamble, that the approach selected is estimated to apply to approximately 25 percent of the currently reported submissions.

C. Alternate Threshold Level

EPA proposed that facilities which meet current section 313 reporting requirements for a listed toxic chemical, but estimate for that chemical the sum of amounts released and transferred (for the purpose of treatment and/or disposal only) is below 100 pounds per year, could take advantage of an alternate manufacture, process, or otherwise use threshold of 1 million pounds per year, for that chemical. The proposed 1 million pound alternate threshold received considerable comment. Comments were primarily directed at the proposal's impact on those facilities with low releases and limited transfers but which have high volume chemical uses. The following unit addresses comments on the alternate threshold in terms of: (1) Application of the alternate threshold; (2) impact on high volume chemical users; and (3) alternatives to the proposed approach.

1. Application of the alternate threshold. Several commenters requested that EPA clarify whether the Agency intends the application of the alternate threshold to apply in the same manner as current threshold applications for submitting Form R. In particular, commenters wanted clarification that the 1 million pound alternate threshold applies in a mutually exclusive manner to either manufacture, or process, or otherwise use of the toxic chemical within the facility. EPA confirms that the application of the alternate threshold applies in the same manner as current thresholds apply in making compliance determinations for submitting Form R. This is reflected in Sec. 327.27(c) of the regulatory text. That is, the alternate threshold represents the amount that the facility manufactures, or processes, or otherwise uses of the listed toxic chemical. If the facility meets the eligibility criteria for the category and does not exceed 1 million pounds of manufacture, or process, or otherwise use, then the facility may be eligible for reduced reporting. In a multi-establishment facility situation, the owner or operator must determine the total amount of the same listed toxic chemical that is, for example, otherwise used within all establishments of the facility and then compare it to the alternate threshold. Owners or operators of facilities should also be aware that the calculation of the low volume category amount, annual reportable amounts not exceeding 500 pounds in total wastes, must be based upon a whole facility determination, and must include all activities occurring within all establishments within the facility, unless otherwise exempt.

   Several commenters saw no apparent rationale for the million pound threshold, since, as one commenter stated, EPA has not collected threshold data for EPCRA section 313 reported chemicals. One commenter states that EPA should eliminate the million pound per year ``manufacture, process, or otherwise use'' threshold, since one of the key objectives for the EPA proposal is to reduce reporting of de minimis releases; this commenter sees no reason to establish an additional qualification threshold related to chemical usage, which goes beyond the Congressional intent for EPCRA to keep the public informed of releases to the environment. Another commenter stated that the 1 million pound threshold is unnecessary because this rulemaking focuses on amounts released not used. The volume of a listed chemical which a facility manufactures, processes, or uses should have no bearing on whether that facility qualifies for the proposed de minimis category based on releases, since no appreciable benefit is gained by either the public or the regulated community if releases are below the facility category level. As described in unit II of this preamble, EPA is issuing this rule under the authority of section 313(f)(2) to reduce the reporting burden for those facilities that have relatively low amounts of listed chemicals in annual reportable amounts. To accomplish this, EPA is establishing a

category of facilities based on certain criteria that would be eligible to use an alternate threshold. It is by the application of a higher manufacture, process, or otherwise use alternate threshold that determines the eligibility of facilities within the category to elect to submit a certification statement in lieu of a Form R for those chemicals to which the category criteria apply.

2. Impact on high volume chemical users. Many commenters criticized the proposed alternate threshold level for penalizing high volume chemical users with low releases and transfers, providing these facilities with no incentive for pollution prevention while displaying a bias against facilities reporting within certain SIC codes. Some believe the regulation should serve as an opportunity for EPA to reward or encourage companies with low releases, instead of subjecting facilities to a threshold which many view as still too low. One firm conducted an analysis indicating that facilities operating in the metal and metal fabrication industries (SIC codes 33 and 34) account for approximately 21 percent of all Form Rs submitted under TRI. Under the proposed rule, these facilities would have been unable to take advantage of the alternate threshold at a disproportionate rate due to their large volumes of materials recycled and further processed that would have exceeded the proposed 1 million pound threshold. Several commenters from the feed industry said that facilities in this industry can regularly process 1 million pounds or more of feed ingredients that contain TRI chemicals but are able to keep their releases typically below 100 pounds. These commenters ask why these operations should be penalized for their high efficiency.

   Some commenters expressed the belief that EPA's proposed alternate threshold had been arbitrarily selected and was not clearly defined. Several commenters emphasize that EPA should set the alternate threshold level high enough to allow all facilities with qualifying low releases to utilize the burden reduction intended by this rulemaking. Some of these commenters recommended alternatives such as a 10 and 50 million pound thresholds instead of EPA's 1 million pound proposed level.

   One commenter said that EPA appears to be unaware of the fundamental reality that production throughput does not relate to amounts released. This commenter repeated the position that EPA should reward large facilities that control their releases by allowing them to qualify for the same benefit.

   Through this rule, EPA intends to provide a reporting modification that delivers some degree of regulatory relief while continuing to capture relevant data. The 1 million pound alternate threshold represents an attempt to balance these two concerns. Many commenters from the environmental community and others commented that the structure of the regulation put forth in EPA's proposal would allow facilities to handle volumes of up to 1 million pounds per chemical without the public having access to this information. These commenters were concerned about those amounts that would not be included in the facility category, such as amounts recycled as EPA proposed, and that the amount of a chemical managed by these activities would only be limited by the level of the alternate manufacture, process, or otherwise use thresholds. EPA believes that concerns raised by commenters, about the proposed approach affecting potentially very large amounts of information on chemicals in waste streams (i.e., they would not be reported), has been mitigated by establishing a facility category based on annual reportable amounts. By establishing the category based on annual reportable amounts, only amounts managed in waste streams up to the level established for the category are eligible for reduced reporting. In contrast, EPA's proposed approach would have allowed a facility to conduct such waste management activities as on-site treatment well beyond the category level of 100 pounds and submit a certification statement so long as the facility did not exceed the alternate threshold of 1 million pounds.

   EPA has established the alternate threshold for manufacture, process, or otherwise use of 1 million pounds in order to provide those facilities with annual reportable amounts not exceeding 500 pounds per chemical with a lower burden reporting option, while preserving more detailed data for facilities that manufacture, process, or otherwise use larger volumes of chemicals. A 1 million pound alternate threshold for amounts manufactured or processed, with annual reportable

amounts not exceeding 500 pounds, represents an efficiency of 99.95 percent and EPA believes this level is likely to include the vast majority of facilities meeting the category. EPA also believes that establishing the alternate threshold at 1 million pounds is an effective means to retain more detailed information where exceedingly large volumes of toxic chemicals are managed.

3. Alternatives to the proposed approach. Many commenters offered alternatives to the proposed activity threshold. One commenter suggested that EPA consider a straight revision of the otherwise use threshold from the current 10,000 pound level to 25,000 pounds in order to simplify the rule.

EPA considered revising the otherwise use threshold in its initial analysis of this rulemaking. By revising the otherwise use threshold, only those forms pertaining to chemicals used would be affected and the reduced reporting would not apply to chemicals manufactured or processed. Additionally, where a revision of the otherwise use threshold may be easier to implement than the alternate threshold established by this rule, it does not provide the ability to consider and make allowances for the types of information that will be affected. For example, the current reporting thresholds allow a facility to have uses of a chemical in amounts up to 10,000 pounds and not be required to report to TRI. Uses of a chemical can result in direct releases or transfers of nearly all of the amounts used. By raising the otherwise use threshold to 25,000 pounds, a facility could potentially release up to 25,000 pounds of a given constituent and the public would not have access to that information through TRI. Two commenters believe EPA should modify the ``otherwise use'' threshold to exclude chemicals contained in closed systems that are not released under normal use activities. Reporting under section 313 is often required when a listed chemical contained in a closed system is charged or recharged in amounts that exceed the ``otherwise use'' threshold of 10,000 pounds. The commenters state that the inclusion of this type of ``otherwise use'' in threshold determinations does not meet the intent of EPCRA, since releases may not occur in the same year that the facility's activity meets the reporting threshold. The commenters further state that pollution prevention is generally not applicable to these kinds of closed systems, with the exception of use of a substitute chemical--which may or may not be less toxic, and may be controlled by other laws and regulations. These commenters argue that the exclusion of closed systems from the threshold determination parallels other EPA guidance on exemptions for use of an article, and is in keeping with the intent of EPCRA. EPA believes the type of activity described by this commenter should continue to be a covered use under TRI. These types of uses can involve handling of significant quantities of a listed chemical. EPA has provided an interpretation that only requires considering amounts toward the otherwise use threshold in those years when such large volumes are handled, such as when refrigeration systems are recharged.

D. Certification Statement

EPA proposed that each qualifying facility that chooses to apply the alternate threshold must file an annual certification statement for that listed toxic chemical instead of a Form R. The proposal outlined two primary purposes of a certification statement. A certification statement serves as a means of informing the public about the presence and general magnitude of combined releases and transfers of a listed toxic chemical by a facility at a lower burden than submitting a Form R. It also serves to satisfy the statutory intent of section 313(f)(2) which requires that reporting be obtained on a substantial majority of releases of a chemical. The proposed elements of the certification statement included signature of a senior management official, facility identification, location and certain other linkage data, the chemical identity, and an indication of any trade secrecy claim.

1. General reactions to the certification statement concept. Many commenters, primarily those representing the regulated community, oppose the concept of a certification statement. Several commenters stated that EPA should comply with the spirit and purpose of the Paperwork Reduction Act and not require an annual certification. Two commenters stated that numerous other environmental requirements, including the basic

TRI thresholds, allow for self-determination with requirements, and question why this rule should be different. Others commenters raised similar concerns. For instance, if the facility meets the ``exemption'' standard, then recordkeeping should be sufficient for the purposes of an inspection.

EPA would like to reiterate that the proposal of an alternate threshold was not developed to establish a wholesale exemption from section 313 reporting requirements. Because the statute does not provide expressed authority to establish a specific release-based threshold, EPA has used the alternate threshold authority in section 313(f)(2) to grant some regulatory relief to small sources. Section 313(f)(2) requires that a revised threshold based on a facility category concept retain reporting on a ``substantial majority'' of releases. Therefore it would not be sufficient to simply rely on recordkeeping as a means of satisfying the law. A certification statement serves the purposes of right-to-know by providing the public with the basic information that a facility manufactures, processes, or otherwise uses a listed chemical in excess of current thresholds in section 313(f)(1), that the annual reportable amount is between 0 and 500 pounds, and that the facility did not exceed the alternate threshold for reporting. This information will be made available in the TRI data base. Company records supporting such determinations are available to EPA inspectors.

Several commenters representing environmental and public interest groups supported the concept of a certification statement. This support is generally associated, however, with a particular low volume amount that establishes the category. For example, one commenter states that a certification statement is appropriate, but the proposed level is too high. Another commenter states that annual certification should be provided, but only if the level is set at 10 pounds or below. Another commenter states that ``at most, EPA should allow annual certification where a facility's releases, all transfers, and waste streams are zero, or 10 pounds, if simple check boxes show where the chemical went (land, water, air, recycling, etc.).'' Another commenter states that annual certification is reasonable only if there is no loophole for recycling and energy recovery, that source reduction goals are not undermined, and that small release quantities are truly small. A commenter from a state government indicated that a certification statement would ensure that the present universe of facilities covered by their State pollution prevention rules would remain intact. EPA, in this final action, has adopted a certification statement approach and the basis of the low volume category has been shifted to an annual reportable amount approach. EPA does not believe, however, that implementation of a certification statement should be made contingent upon the setting of a particular poundage value for the category level. EPA believes that a certification statement is necessary in order to maintain public right-to-know and to meet the statutory ``substantial majority'' of releases requirement. The certification statement relates to a range volume for a given chemical contained in the annual reportable amount that can have multiple connections to quantitative line items as reported or Form R. However, EPA does not agree that additional check boxes are needed in the certification statement. EPA believes that the category and level established in this final rule are such that replacement of full Form Rs, for those eligible reports, with certification statements provides the public with an adequate level of information.

2. Frequency of certification. In the proposed rule, frequency of certification would track the annual requirement for submission of Form R. EPA requested comment on the appropriateness of certification statements received less frequently than on an annual basis. Commenters representing environmental and public interest groups supported annual certification. Many commenters representing the regulated community stated that industries should be able to submit the certification only once, arguing that a facility that takes advantage of the alternate threshold will likely remain eligible year after year, and if they become ineligible, they will submit a Form R. These commenters stated that

during facility inspections, EPA could require facilities to perform detailed calculations to verify eligibility and that such detailed calculations to support the certification should not be required each year.

Other commenters recommended a 3 or 5-year certification schedule. Several commenters, many from the metal plating industry, favor a 3- year certification with appropriate recordkeeping. Commenters from industry generally believe that annual certification at any level is not necessary and does little to reduce the burden of reporting. However, one commenter representing an industry which generally opposed the certification statement, indicated that if EPA were to require such a statement that it should be annual. The reason given is that there is a greater likelihood of missed filings under a bi-annual or tri-annual schedule and the consequent exposure to enforcement. In this final rule, EPA has retained an annual schedule for submission of the certification statements. EPA believes that a onetime or multi-year approach would not provide the data continuity necessary for providing the TRI data annually to the public. In addition, EPA does not believe that it should present the information to the public in the TRI data base from such certification activity unless it is based upon a positive submission by the facility. For example, lack of receipt of a certification statement during one of the ``out years'' can mean one of two things. The facility could still be within the eligibility limits of the alternate threshold, or it could be beyond such limits and has not submitted a Form R. EPA is sensitive to the cost considerations of an annual certification schedule. However, this cost is in general a lower cost than for Form R submission each year. Also, if operations do not change significantly from year-to-year, as commenters indicate, then the subsequent year determination of eligibility should not be a time-consuming data development process.

Development of the information needed for a facility's certification statements will generally involve only a one-time (onechemical) collection burden. In addition, most of the information on the certification statement is very similar, if not identical to the facility identification section of the current Form R. Furthermore, the Agency plans to develop streamlined methods for submitting the certification statements beginning with the 1995 reporting year. The Agency's Automated Form R magnetic media submission software will be modified to include the ability to create the certification statement. This software is already designed to allow importation of data previously filed. Once created or imported, the data will remain accessible for all subsequent filing unless there has been a change in the basic facility identification information. Even then, changing the data will be straight-forward. The only additional variable will be the name of the listed toxic chemical to which the certification statement applies.

3. Representing certification statements in the data base. EPA plans to enter the data from these certification statements into its regular TRI data bases. The data will be marked to indicate that it represents certification statements rather than Form Rs. In this way, a geographic or chemical search will be able to show the presence of a facility and the chemical for which it is applying the alternate threshold. Quantitative analyses using certification statement data could be done in one of several ways. The user could make a ``worst case'' assumption and choose to count a total of 500 pounds of the chemical released from that facility. An alternative would be to use a midpoint of 250 pounds total release, similar to the treatment of current range reports.

   EPA received comment from a federal agency that requested that the regulatory language of the proposal be changed prior to the final rule that would allow facilities to submit a single certification for multiple chemicals meeting the alternate threshold criteria. At this time, EPA is requiring that a facility submit a unique certification statement for each chemical meeting the alternate threshold conditions. Facilities may assert a trade secrecy claim for a chemical identity on the certification statement as on the Form R. Reports submitted on a per chemical basis protect against the disclosure of trade secrets.

Certification statements with trade secrecy claims, like Form Rs with similar claims, will be separately handled upon receipt to protect against disclosure. Comingling trade secret chemical identities with non-trade secret chemical identities on the same submission increases the risk of disclosure. Also, processing techniques currently in place make handling of one form with more than one chemical difficult and be more likely to create submission errors on the part of Form R reporters, as well as handling errors by EPA.

E. Covered Facility

Several commenters requested clarification from the Agency regarding the status of a facility that may take advantage of the alternate threshold. These commenters were concerned that the preamble discussion in the proposal seemed to indicate that those facilities taking advantage of an alternate threshold were not covered facilities for purposes of TRI reporting, yet language in the proposed section 372.27(a) states that ``. . . a covered facility may apply an alternate reporting threshold . . . .''

1. Applicability to ``piggy-back'' requirements. Several commenters questioned whether a facility that utilizes the alternate threshold is a section 313 ``covered facility'' as outlined in 40 CFR 372.22. The primary concern expressed by these commenters relates to so called ``piggy-back'' requirements of other state or federal laws or regulations. For example, a state law or regulation may cite a section 313 ``covered facility'' as a facility that must pay a fee, submit additional information, or conduct facility pollution prevention planning.

   40 CFR 372.22 of the regulations, ``covered facilities for toxic chemical release reporting,'' defines the facilities for which a Form R must be submitted. A facility that can take advantage of the alternate threshold may or may not be a ``covered facility'' for purposes of any specific toxic chemical. It will depend upon the factual situation and the choices made by the owner/operator. The following examples illustrate common situations/choice combinations: (i) A facility that fits within the category description, and manufactures, processes or otherwise uses 1 million pounds or less of a listed toxic chemical annually, and whose owner/operator elects to take advantage of the alternate threshold is not a covered facility and no Form R is required.

   (ii) The facility described in example (i) that fits within the category description, and manufactures, processes, or otherwise uses 1 million pounds or less of a toxic chemical annually, but whose owner/ operator elects not to use the alternate threshold is a covered facility subject to the thresholds under section 313(f)(1) for which a Form R must be submitted.

   (iii) A facility that fits within the category description, but that manufactures, processes, or otherwise uses more than 1 million pounds of a toxic chemical annually must still submit Form R and, therefore, remains a covered facility. In this final rule, Sec. 372.22 has been amended to reflect this interpretation. The Agency wants to make it clear, however, that its determination on this issue may not necessarily mitigate the impact of piggy-back requirements. The ultimate impact of being a ``covered facility'' can vary depending upon how the linkage is constructed in the specific state or other federal requirement. For example, where a state requirement is based upon the number of Form R reports submitted to the state (e.g., report-based filing fee), the submission of certification statements instead of Form R reports could provide an incremental burden reduction. Conversely, if the state requirement is based upon the submission of at least one Form R report, a facility may be subject to the same degree of piggy-back burden irrespective of the existence of the alternate threshold. In this scenario, it is only those facilities who could substitute certification statements for all of their Form R reports that may benefit. Under any circumstance, a state could modify its requirements to adjust for certification statements, and EPA has no control over

such state actions. Owners/operators should contact the appropriate state authorities for guidance. EPA's determination on this issue in no way limits or affects its ability to bring enforcement actions against a facility. If a facility wishes to take advantage of the alternate threshold, then it must determine that its annual reportable amount did not exceed 500 pounds of the chemical for that year, it must file a certification statement, and it must keep appropriate records. Therefore, if the facility fails to submit either a certification statement or a Form R, the facility is a non-reporter and faces penalties up to $25,000 per day per violation (see EPCRA section 325(c), 42 U.S.C. 11045). In addition, even if the facility files a certification statement, the Agency can bring an enforcement action based upon the inadequacy of required records or a determination that the facility's calculation of annual reportable amount was incorrect.

2. Applicability to partial facility reports. Commenters asked whether the alternate threshold certification process applied in the same manner as Form R reporting in the case of such partial facility reports. Currently the regulations at Sec. 372.30(c) allow separate reports to be filed for the same chemical by establishments within a multi-establishment facility. This was allowed as a convenience for such multi-establishment facilities because these separate establishments may operate independently of one another and would find it easier to file reports on their own operations than to have to consolidate reporting data across several such operating units. However, this is only allowed if there has been a total facility threshold determination for the manufacture, process, or otherwise use of a listed chemical. Form R contains a check box for a question relating to whether the report is a ``partial facility'' report. For the purposes of the certification statement, the facility must also make its determination based upon the entire facility's operations including all of its establishments. If the facility as a whole is able to take advantage of the alternate threshold, a single certification is required. EPA can see no benefit in allowing a facility with multiple establishments to submit more than one certification statement for each of the chemicals for which it is eligible. The eligibility to submit a certification statement is made on a whole facility determination. Thus, all of the information necessary to make the determination has been assembled to the facility level. No other detail is required by the certification statement and, therefore, no apparent benefit is provided to the facility in having it submit multiple statements containing duplicative information.
   EPA also believes that multiple submissions of certification statements for the same chemical from the same facility provides a greater opportunity for the data to be misinterpreted. If, for example, a user of the data were interested in a facility's chemical management practices and found more than one certification for the same chemical, as it would appear in the data base, then the user might incorrectly assume that the facility managed the maximum annaul reportable amount of 500 pounds for that chemical times the number of certification statements appearing in the data base for the same chemical from another establishment. For these reasons, EPA is not extending ``partial facility'' or multiple submissions of the certification statement by multi-establishment facilities.
3. Loss of eligibility for the threshold and relationship to prior year reporting. A commenter questioned whether the facility was required to submit prior year data under section 8 of Form R if in a subsequent reporting year the facility became ineligible to take advantage of the alternate threshold. EPA's determination on this issue is that the facility would not be required to include prior year data. This is because the facility was not specifically obligated to develop such data and submit

it on Form R. This would be similar to a situation in which a facility fell below the statutory threshold for an activity and was not required to file Form R for a preceding year. The facility may enter ``NA'' in these blocks of column A of section 8 of Form R. However, EPA encourages facilities to provide such data voluntarily. A facility may have developed specific determinations regarding amounts that contributed to the total waste determination in order to take advantage of the alternate threshold for that prior year. Given this, the facility could fill in the appropriate blocks of column A without significant additional burden.

F. Degree of Burden Reduction

A majority of commenters indicated that the proposal would provide, at best, only minimal regulatory relief from current reporting burden. Others indicated that, while they support the concept of this proposal, it will not relieve the reporting burden placed on either large or small businesses. In addition, some commenters considered EPA's estimates of net savings to the regulated community to be overstated. Most of the comments received concerning burden relief focussed on four aspects that, in the commenters' view, are unrelieved by EPA's proposal: (1) Data elements required to complete the annual certification; (2) level of effort required to document eligibility for submitting a certification statement; (3) failure of EPA to account for facilities manufacturing, processing, or otherwise using chemicals in excess of the alternate threshold; and (4) relief from additional regulations at the state and local level, which are predicated upon eligibility for reporting in TRI.

1. Data elements required to complete the annual certification. Commenters' most frequent contention was that only minimal burden reduction would be available through the alternate threshold. The reason given by commenters was that filing the annual certification statement would require that all calculations required when filing Form R would still be necessary in order to document eligibility for the alternate threshold. The only reduction in burden, argue commenters, would be associated with the actual preparation and mailing of Form R. EPA emphasizes that information regarding source reduction activities (including, for example, prior and subsequent year estimates required under section 8 of Form R) and certain other data (including, for example, location of transfer recipients; waste treatment method and efficiency) would not be required under the rule. Some commenters believe that many facilities eligible for the alternate threshold will perform such calculations in any event, to ensure that a complete Form R submission can be prepared in case their eligibility cannot be maintained from year-to-year. EPA stresses that these calculations for previous and subsequent years are not required, and concludes that meaningful burden reduction is available through the alternate threshold to facilities choosing to file the certification statement.
2. Level of effort required to document eligibility for the alternate threshold. Some commenters expressed concern regarding the level of effort needed to document a claim of eligibility under the proposed rule, fearing that increased stringency will be applied to recordkeeping requirements. Consequently, the additional burden and cost associated with this increased stringency, commenters argue, could prevent many facilities from taking advantage of the exemption. While EPA recognizes that facility operators may perceive a level of burden in documenting eligibility for the alternate threshold in excess of current requirements, EPA does not intend to seek greater precision in estimates from facilities

eligible for the alternate threshold. Since facility operators have presumably filed Form Rs in the past, estimation procedures and recent records of calculations and submissions most likely exist for most facilities; thus, new or additional procedures should not need to be established. Consequently, EPA disagrees with these commenters, and sees no reason why recordkeeping requirements associated with the alternate threshold should deter eligible facilities from filing the annual certification statement.

3. Failure of EPA to account for facilities manufacturing, processing, or otherwise using chemicals in excess of the alternate threshold. One commenter explained that EPA's aggregate estimate of savings attributable to the alternate threshold were overstated due to the Agency's assumption that all facilities identified as meeting the category criteria were in fact eligible to file the certification statement under the alternate threshold. The commenter noted that many facilities with low level releases would be ineligible to file the annual certification statement because they would exceed the proposed 1 million pound alternate manufacture, process, or otherwise use threshold.
   EPA acknowledges this, and agrees that, to the extent that there are facilities that satisfy the category criteria but do not meet threshold requirements, aggregate savings are overstated. While data are not available to estimate the frequency of occurrence of such facilities, EPA is confident that the overall impacts of the assumption are minor. Conversely, EPA's estimates may understate savings due to the effect of range reporting on the analysis. That is, the number of facilities estimated to meet the category criteria likely excludes many facilities satisfying the criteria because many take advantage of the option of range reporting when filing Form R. Since facilities may report releases within a range of 11-499 pounds to each media type, EPA cannot know for certain the number of facilities for which the annual reportable amount would be limited to 500 pounds. Where range reporting was used, EPA assumed actual releases to be the midpoint of 250 pounds; thus, facilities with actual releases below this amount would be excluded if reporting for more than two media types.
4. Impact of other regulatory requirements. Many commenters pointed out that burden is also a function of ``piggyback'' state or federal requirements that reference TRI reporting as a trigger for additional reporting, submission of fees, or development of facility plans for pollution prevention. Commenters urge EPA to clearly state that those who take advantage of the alternate threshold are not considered to be ``covered facilities'' and should not be subject to additional ``piggyback'' regulations. As discussed in unit III.E.1. of this preamble, the covered facility determination relative to these other requirements is a chemical-specific determination. If all potential Form R reports can be converted to certification statements, EPA estimates that approximately 3,800 facilities would no longer be ``covered facilities'' for purposes of Form R reporting. In addition, approximately 6,000 other facilities would be eligible to convert one or more of their Form R reports to a certification statement (Ref. 4). However, facilities that can take advantage of the alternate threshold are required to report under EPCRA section 313 for purposes of submission of the alternate threshold certification statement for a specific chemical. The ultimate mitigation of the burden associated with the

piggyback requirements will relate to the specific way in which those requirements reference TRI submitters or forms.

G. Effective Date

Some commenters suggested that EPA consider alternatives to the effective date of the proposal. Suggestions included a retroactive date corresponding to the effective date of EPCRA, in essence applying the alternate threshold to all past reports under section 313. Others felt that no delays in promulgating this rule should prevent its application in reporting year 1995. Another commenter indicated that EPA should deliberate as long as is necessary to complete the analysis that supports this rule, while a few commenters requested that the effective date of the rule be applied to reporting year 1994. Contingent upon OMB approval, the alternate threshold rule is effective for reporting on activities beginning January 1, 1995, with the first receipt of certifications due on or before July 1, 1996. EPA will publish a technical amendment in the Federal Register when the reporting additions have been approved by OMB. As with any major changes in reporting requirements, EPA believes that both the regulated community, EPA, and the states require time to understand and prepare for implementing this change. The regulated community will need an opportunity to become fully aware of the alternate threshold and understand how it can apply to their data development and their own data management systems for TRI compliance purposes. EPA and the states need time to make necessary modifications in data systems to incorporate the certification statements. Also, changes to the Agency's automated reporting software have to be made and tested in order to add the certification statement feature.

IV. Rulemaking Record

The record supporting this rule is contained in the TSCA docket, number OPPTS-400087. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

V. References

(1) Regulatory Impact Analysis of the EPCRA Section 313 Alternate Threshold Final Rule; USEPA, (October 17, 1994). (2) Title III List of Lists, Consolidated List of Chemicals Subject to Reporting Under the Emergency Planning And Community Right-To-Know Act; USEPA, 560/492-011, (January 1992). (3) Toxic Release Inventory-Small Source Exemption Issues Paper; prepared by the Office of Pollution Prevention and Toxics, (January 27, 1994).

(4) TRI Data: Summary of Estimated Impacts (1991 verses 1992).

VI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ``significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines as ``significant'' those regulatory actions likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy,

productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ``economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is ``significant'' because of the novel policy issues arising out of the statutory mandate to maintain reporting on a substantial majority of releases if the reporting threshold under section 313(f)(1) is modified. This action was submitted to OMB for review, as required by Executive Order 12866, and any comments or changes made in response to OMB suggestions or recommendations have been documented in the public record.

EPA has prepared a Regulatory Impact Analysis (RIA) in conjunction with this rulemaking. A copy of this document (titled ``Regulatory Impact Analysis of the Final Rule for the Alternate Threshold for EPCRA Section 313 Reporting'') is available in the TSCA Nonconfidential Information Center (NCIC) (also known as the TSCA Public Docket Office), for review and copying (see unit IV. of this preamble). EPA has estimated that the alternate threshold will generate $19 million a year in savings. The savings from the final rule differ from the savings from the proposed rule because the basis of the facility category has been changed from releases and transfers to annual reportable amounts, and the level has been changed from 100 pounds to 500 pounds. These differences are shown in Table 2 below. EPA is issuing a final rule to add chemicals and chemical categories to the EPCRA section 313 list. The alternate threshold is estimated to save an additional $3 million per year for reporting on these additional chemicals. Further information on the chemical additions will be presented the Federal Register.

Table 2.--Summary of Cost Comparison Between Proposed and Final Rule

Final Rule (500lb. Annual Reportable Amount)	Proposed Rule (100lb. Transfer)	Final Rule with New Release and Chemicals
Number of facilities with one or more reports affected	9,900	11,600
10,200		
Number of facilities with all reports affected	3,800	4,500
3,600		
Number of reports affected	20,100	23,600
20,500		
Industry savings per report affected	$912	$912
$1,264		

EPA savings per report affected	$33.20	$33.20	$33.20
Annual industry savings	$25.9 million	$18.4 million	$21.5 million
Annual EPA savings	$0.7 million	$0.7 million	$0.8 million

Source--RIA.

The savings described in Table 2 above are only related to those actions that are required under EPCRA section 313. There are other requirements that are linked to reporting under EPCRA section 313, but that are not required by it. EPA is aware of 13 states that place a fee or tax on facilities that file a Form R or report to EPA under EPCRA section 313, and 7 states that mandate pollution prevention plans from such facilities. EPA has also created special requirements for certain facilities with NPDES storm water permits that report under EPCRA section 313.

The alternate threshold may also create savings related to the linked requirements. Since a facility that can take advantage of the alternate threshold is not a ``covered facility'' for purposes of a specific Form R submission, the linkage to state requirements may no longer hold. This will not necessarily increase net social benefits, because the linked fees and taxes are transfers (and there will be a corresponding decrease in state revenues), and the benefits of covering these facilities under the pollution prevention planning requirements may be lost. Moreover, these states may choose to reimpose the linked requirements, even if the facilities have not filed a Form R.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule will result in cost savings to facilities, EPA certifies that small entities will not be significantly affected by it.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1704.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch, Mail Code 2136, EPA, 401 M St., SW., Washington, DC 20460 or by calling (202) 260-2740. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the Federal Register. This collection of information has an estimated reporting burden averaging 33 hours per response and an estimated annual recordkeeping burden averaging 6 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: November 22, 1994.
Carol M. Browner,
Administrator.
Therefore, 40 CFR part 372 is amended as follows:
PART 372--[AMENDED]

1. The authority citation for part 372 continues to read as follows:
Authority: 42 U.S.C. 11023 and 11048.
2. In Sec. 372.10, by adding a new paragraph (d) to read as follows:
Sec. 372.10 Recordkeeping.

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(d) Each owner or operator who determines that the owner operator may apply the alternate threshold as specified under Sec. 372.27(a) must retain the following records for a period of 3 years from the date of the submission of the certification statement as required under Sec. 372.27(b):
(1) A copy of each certification statement submitted by the person under Sec. 372.27(b).
(2) All supporting materials and documentation used by the person to make the compliance determination that the facility or establishment is eligible to apply the alternate threshold as specified in Sec. 372.27.
(3) Documentation supporting the certification statement submitted under Sec. 372.27(b) including:
(i) Data supporting the determination of whether the alternate threshold specified under Sec. 372.27(a) applies for each toxic chemical.
(ii) Documentation supporting the calculation of annual reportable amount, as defined in Sec. 372.27(a), for each toxic chemical, including documentation supporting the calculations and the calculations of each data element combined for the annual reportable amount.
(iii) Receipts or manifests associated with the transfer of each chemical in waste to off-site locations.

- In Sec. 372.22, by revising paragraph (c) to read as follows:

Sec. 372.22 Covered facilities for toxic chemical release reporting.

- * * * *

(c) The facility manufactured (including imported), processed, or otherwise used a toxic chemical in excess of an applicable threshold quantity of that chemical set forth in Sec. 372.25 or Sec. 372.27.

- In Sec. 372.25, by revising the introductory paragraph to read as follows:

Sec. 372.25 Thresholds for reporting.
Except as provided in Sec. 372.27, the threshold amounts for purposes of reporting under Sec. 372.30 for toxic chemicals are as follows:

- * * * *
- By adding new Sec. 372.27 to read as follows:

Sec. 372.27 Alternate threshold and certification.

(a) With respect to the manufacture, process, or otherwise use of a toxic chemical, the owner or operator of a facility may apply an alternate threshold of 1 million pounds per year to that chemical if the owner or operator calculates that the facility would have an annual reportable amount of that toxic chemical not exceeding 500 pounds for the combined total quantities released at the facility, disposed within the facility, treated at the facility (as represented by amounts destroyed or converted by treatment processes), recovered at the facility as a result of recycle operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycle, energy recovery, treatment, and/or disposal. These volumes correspond to the sum of amounts reportable for data elements on EPA Form R (EPA Form 9350-1; Rev. 12/4/93) as Part II column B or sections 8.1 (quantity released), 8.2 (quantity used for energy recovery on-site), 8.3 (quantity used for energy recovery off-site), 8.4 (quantity recycled on-site), 8.5 (quantity recycled off-site), 8.6 (quantity treated onsite), and 8.7 (quantity treated off-site).
(b) If an owner or operator of a facility determines that the owner or operator may apply the alternate reporting threshold specified in paragraph (a) of this section for a specific toxic chemical, the owner or operator is not required to submit a report for that chemical under Sec. 372.30, but must submit a certification statement that contains the information required in Sec. 372.95. The owner or operator of the facility must also keep records as specified in Sec. 372.10(d). (c) Threshold determination provisions of Sec. 372.25 and exemptions pertaining to threshold determinations in Sec. 372.38 are applicable to the determination of whether the alternate threshold has been met.
(d) Each certification statement under this section for activities involving a toxic chemical that occurred during a calendar year at a facility must be submitted to EPA and to the State in which the facility is located on or before July 1 of the next year. 6. By adding a new Sec. 372.95 to read as follow:
Sec. 372.95 Alternate threshold certification and instructions.
(a) Availability of the alternate threshold certification statement and instructions. Availability of the alternate threshold certification statement and instructions is the same as provided in Sec. 372.85(a) for availability of the reporting form and instructions. (b) Alternate threshold certification statement elements. The following information must be reported on an alternate threshold certification statement pursuant to Sec. 372.27(b): (1) Reporting year.
(2) An indication of whether the chemical identified is being claimed as trade secret.
(3) Chemical name and CAS number (if applicable) of the chemical, or the category name.
(4) Signature of a senior management official certifying the following: pursuant to 40 CFR 372.27, ``I hereby certify that to the best of my knowledge and belief for the toxic chemical listed in this statement, the annual reportable amount, as defined in 40 CFR 372.27(a), did not exceed 500 pounds for this reporting year and

that the chemical was manufactured, or processed, or otherwise used in an amount not exceeding 1 million pounds during this reporting year." (5) Date signed.
(6) Facility name and address.
(7) Mailing address of the facility if different than paragraph (b)(6) of this section.
(8) Toxic chemical release inventory facility identification number if known.
(9) Name and telephone number of a technical contact. (10) The four-digit SIC codes for the facility or establishments in the facility.
(11) Latitude and longitude coordinates for the facility. (12) Dun and Bradstreet Number of the facility. (13) EPA Identification Number(s) (RCRA) I.D. Number(s) of the facility.
(14) Facility NPDES Permit Number(s). (15) Underground Injection Well Code (UIC) I.D. Number(s) of the facility.
(16) Name of the facility's parent company. (17) Parent company's Dun and Bradstreet Number. [FR Doc. 94-29377 Filed 11-29-94; 8:45 am] BILLING CODE 6560-50-F